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DISTRICT COURT
CONNIE MATTFIELD

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MONTANA FOURTEENTH JUDICIAL DISTRICT COURT
MUSSELSHELL COUNTY

SIGNAL PEAK ENERGY, LLC

Plaintiff,

vs.

GENERON IGS, INC.; SULLAIR, LLC; POWER
SERVICE, INC. and JOHN DOES 1-10.

Defendants.

Cause No. DV-16-43
Judge Randal I. Spaulding

**COMPLAINT AND
DEMAND FOR TRIAL BY JURY**

COMES NOW Plaintiff, Signal Peak Energy, LLC by and through its undersigned
counsel, and for its Complaint and Demand for Trial by Jury states and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff Signal Peak Energy, LLC ("Signal Peak") is a Delaware corporation with
its principal place of business in Columbus, Ohio.

2. Upon information and belief, Defendant Generon IGS, Inc. ("Generon") is a

1 Delaware corporation with its principal place of business in Houston Texas.

2 3. Upon information and belief, Defendant Sullair, LLC ("Sullair") is an Indiana
3 limited liability company with its principal place of business in Michigan City, Indiana.

4 4. Upon information and belief, Defendant Power Service, Inc. ("Power Service") is
5 a Wyoming Corporation with its principal place of business in Casper, Wyoming.

6 5. Upon information and belief, John Does 1-10 are individuals and/or companies,
7 including subcontractors and manufacturers, who participated in and/or provided products used
8 in the construction, manufacture, installation, maintenance, service, commissioning, and/or
9 inspection of the nitrogen generating plant, including but not limited to the subject compressor
10 unit.

11 6. The amount in controversy exceeds the jurisdictional minimum of this Court.

12 7. Venue is proper in this Court as the events giving rise to Plaintiff's claims
13 occurred in the Town of Roundup, County of Musselshell, State of Montana.

14 **FACTS**

15 8. At all times relevant herein, Signal Peak owned a coal mine located at 100 Portal
16 Drive in Roundup, Montana (the "Mine").

17 9. The Mine has a containerized nitrogen generating plant that was supplied by
18 Defendant Generon and installed/commissioned in various stages from August, 2012 through
19 April 2013 (the "Plant").

20 10. Generon installed and commissioned the various components of the Plant, which
21 included nitrogen generating and compressor units (among other components).

22 11. On November 24, 2014, at approximately 9:30 A.M., a Signal Peak employee
23 turned on the Plant (it has previously been idle for three weeks).

24

1 12. At approximately 11:25 A.M., smoke was discovered escaping from one of the
2 plant's compressor units (C9) (the "Compressor Unit").

3 13. Upon further inspection a fire was discovered within the Compressor Unit and the
4 fire had spread to a nitrogen production unit (NPU2) and the motor control center (the "Fire").

5 14. The Fire was extinguished shortly after its discovery.

6 15. However, Fire caused extensive damage to the Compressor Unit, the nitrogen
7 production unit, and the motor control center.

8 16. The Fire also caused Signal Peak significant extra expenses in renting a temporary
9 nitrogen generator when repairs to the plant were ongoing.

10 17. Damages from the Fire totaled \$2,355,271.00.

11 18. Subsequent expert investigations revealed the Fire originated in the oil/air
12 separator in the Compressor Unit.

13 19. The oil/air separator was manufactured by Defendant Sullair.

14 20. The Plant was maintained and serviced by Defendant Power Service.

15 21. Expert investigations also revealed that Generon improperly installed the
16 Compressor Unit.

17 22. Specifically, Generon installed the Compressor Unit's oil pressure switch and
18 temperature switch (safety devices) with the incorrect setting.

19 23. The incorrect setting caused the Compressor Unit to shut down shortly after start-
20 up during Generon's commissioning process.

21 24. Instead of setting the switches to the correct setting, Generon employees simply
22 wired ("jumped") around them, thereby rendering them totally ineffective.

23 25. The failure of these switches to be installed correctly caused and/or contributed to
24

1 the aforementioned damage.

2 **COUNT I – NEGLIGENCE/GROSS NEGLIGENCE (GENERON)**

3 26. Plaintiff restates and re-alleges all paragraphs above.

4 27. At all times relevant herein Generon had a duty to exercise reasonable care when
5 designing, manufacturing, installing, commissioning, inspecting, and or servicing the Plant,
6 including the Compressor Unit, so as to avoid damage to Signal Peak's property.

7 28. Generon breached its duty through the following acts and/or omissions
8 constituting negligence and/or gross negligence, including but not limited to:

- 9 a. Failing to install the Compressor Unit with the oil pressure and
10 temperature safety switches on the correct setting;
- 11 b. Wiring around the safety switches and rendering them ineffective;
- 12 c. Failing to include additional safety switches or monitoring devices in the
Compressor Unit that could have prevented the Fire;
- 13 d. Failing to properly design and install the Compressor Unit so a fire would
14 not occur;
- 15 e. Failing to use reasonable care when designing, manufacturing, installing,
commissioning, and or servicing the Plant, including but not limited to the
16 Compressor Unit;
- 17 f. Failing to provide adequate warnings/instructions as to the use,
maintenance, operation, and service of the Plant, including but not limited
18 to the Compressor Unit;
- 19 g. Improperly delegating, hiring, and/or supervising the workmanship and
safety of the services delegated and/or subcontracted to another entity; and
- 20 h. Any other acts or omissions that may become known during the course of
litigation.

21 29. As a direct and proximate result of Generon's negligence and/or gross negligence,
22 the Fire occurred and caused extensive damage to Signal Peak's property and resulted in
23 significant extra expense.

1 30. Damages from the Fire totaled \$2,355,271.00.

2 WHEREFORE, Plaintiff respectfully request this Court award it a judgment against
3 Generon in an amount to be proven at trial, together with costs, attorney's fees, expenses, pre-
4 and post-judgment interest and any other relief this Court deems just and proper.

5 **COUNT II – BREACH OF EXPRESS AND/OR**
6 **IMPLIED WARRANTIES (GENERON)**

7 31. Plaintiff restates and re-alleges all paragraphs above.

8 32. Generon designed, manufactured, sold, installed, commissioned and/or serviced
9 inspected the Plant, including but not limited to the Compressor Unit.

10 33. Generon impliedly and/or expressly warranted that the Plant, including but not
11 limited to the Compressor Unit, would be fit for the ordinary purpose the Plant was to be used,
12 that the Plant would be fit for Signal Peak's particular purposes, that the Plant would be of fair
13 average quality, that the Plant would be free from defects, and that it would design, manufacture
14 and install the Plant with reasonable care.

15 34. Generon breached its express and/or implied warranties through the following
16 acts and/or omissions:

- 17 a. Failing to install the Compressor Unit with the oil pressure and
temperature safety switches on the correct setting;
- 18 b. Wiring around the safety switches and rendering them ineffective;
- 19 c. Failing to include additional safety switches or monitoring devices in the
20 Compressor Unit that could have prevented the Fire;
- 21 d. Failing to properly design and install the Compressor Unit so a fire would
not occur;
- 22 e. Failing to use reasonable care when designing, manufacturing, installing,
23 commissioning, and or servicing the Plant, including but not limited to the
Compressor Unit;

- 1 f. Failing to provide adequate warnings/instructions as to the use,
2 maintenance, operation, and service of the Plant, including but not limited
3 to the Compressor Unit;
4 g. Improperly delegating, hiring, and/or supervising the workmanship and
5 safety of the services delegated and/or subcontracted to another entity; and
6 h. Any other acts or omissions that may become known during the course of
7 litigation.

8 35. As a direct and proximate result of Generon's breach of its express and/or implied
9 warranties, the Fire occurred and caused extensive damage to Signal Peak's property and
10 resulted in significant extra expense.

11 36. Damages from the Fire totaled \$2,355,271.00.

12 WHEREFORE, Plaintiff respectfully request this Court award it a judgment against
13 Generon in an amount to be proven at trial, together with costs, attorney's fees, expenses, pre-
14 and post-judgment interest and any other relief this Court deems just and proper.

15 **COUNT III – BREACH OF CONTRACT (GENERON)**

16 37. Plaintiff restates and re-alleges all paragraphs above.

17 38. Signal Peak contracted with Generon whereby Generon agreed to design,
18 manufacture, sell, supply, install, and commission the Plant, including but not limited to the
19 Compressor Unit.

20 39. Generon breached its contractual obligations through the following actions and/or
21 omissions, including but not limited to:

- 22 a. Failing to install the Compressor Unit with the oil pressure and
23 temperature safety switches on the correct setting;
24 b. Wiring around the safety switches and rendering them ineffective;
c. Failing to include additional safety switches or monitoring devices in the
Compressor Unit that could have prevented the Fire;

- 1 d. Failing to properly design and install the Compressor Unit so a fire would
2 not occur;
- 3 e. Failing to use reasonable care when designing, manufacturing, installing,
4 commissioning, and or servicing the Plant, including but not limited to the
5 Compressor Unit;
- 6 f. Failing to provide adequate warnings/instructions as to the use,
7 maintenance, operation, and service of the Plant, including but not limited
8 to the Compressor Unit;
- 9 g. Improperly delegating, hiring, and/or supervising the workmanship and
10 safety of the services delegated and/or subcontracted to another entity; and
- 11 h. Any other acts or omissions that may become known during the course of
12 litigation.

13 40. As a direct and proximate result of Generon's breach of contract, the Fire
14 occurred and caused extensive damage to Signal Peak property and resulted in significant extra
15 expense.

16 41. Damages from the Fire totaled \$2,355,271.00.

17 **WHEREFORE**, Plaintiff respectfully request this Court award it a judgment against
18 Generon in an amount to be proven at trial, together with costs, attorney's fees, expenses, pre-
19 and post-judgment interest and any other relief this Court deems just and proper.

20 **COUNT IV – STRICT PRODUCTS LIABILITY (GENERON)**

21 42. Plaintiff restates and re-alleges all paragraphs above.

22 43. At all pertinent times herein, Generon was in the business of manufacturing,
23 assembling, designing, producing, inspecting, selling, and/or otherwise placing into the stream
24 of containerized nitrogen generating plants, including compressor units.

44. Generon, in whole or in part, manufactured, assembled, designed, produced,
inspected, and/or sold the Plant, including but not limited to the Compressor Unit.

1 45. At the time the Plant, including but not limited to the Compressor Unit, left the
2 control of Generon, a defect existed that rendered the Plant defective in that it was dangerous to
3 an extent beyond that anticipated by the ordinary user.

4 46. The Plant, including but not limited to the Compressor Unit, was defective in
5 manufacture, design and/or warning/instruction as:

- 6 a. Generon failed to install/manufacture the Compressor Unit with the oil
7 pressure and temperature safety switches on the correct setting;
- 8 b. Generon wired around the safety switches and rendering them ineffective;
- 9 c. Generon failed to include additional safety switches or monitoring devices
10 in the Compressor Unit that could have prevented the Fire;
- 11 d. Generon failed to properly design and install/manufacture the Compressor
12 Unit so a fire would not occur;
- 13 e. Generon failed to provide adequate warnings/instructions as to the use,
14 maintenance, operation, and service of the Plant, including but not limited
15 to the Compressor Unit;
- 16 f. Generon failed to use reasonable care when designing, manufacturing,
 installing, commissioning, and or servicing the Plant, including the
 Compressor Unit;
- 17 g. Any other evidence of manufacturing, design and/or warning/instruction
18 defects that may become known during the course of litigation.

19 47. As a direct and proximate result of the defective condition of the Plant, including
20 but not limited to the Compressor Unit, the Fire occurred and caused extensive damage to Signal
21 Peak property and resulted in significant extra expense.

22 48. Damages from the Fire totaled \$2,355,271.00.

23 **WHEREFORE**, Plaintiff respectfully request this Court award it a judgment against
24 Generon in an amount to be proven at trial, together with costs, attorney's fees, expenses, pre-
and post-judgment interest and any other relief this Court deems just and proper.

COUNT V – NEGLIGENCE (SULLAIR)

49. Plaintiff restates and re-alleges all paragraphs above.

50. At all times relevant herein Sullair had a duty to exercise reasonable care when designing, manufacturing, installing, and/or commissioning the Sullair components in the Compressor Unit, including but not limited to the oil/air separator, so as to avoid damage to Signal Peak's property.

51. Sullair breached its duty through the following acts and/or omissions constituting negligence and/or gross negligence, including but not limited to:

- a. Failing to design and manufacture the subject oil/air separator to allow for adequate grounding to prevent sparking or ignition;
- b. Failing to provide adequate warnings and instructions as to the use, maintenance, and service of the subject oil/air separator;
- d. Failing to properly design and manufacture the subject oil/air separator so a fire would not occur;
- e. Failing to use reasonable care when designing, manufacturing, providing warnings/instructions and/or installing the subject oil/air separator and other components in the Compressor Unit;
- f. Improperly delegating, hiring, and/or supervising the workmanship and safety of the services delegated and/or subcontracted to another entity; and
- g. Any other acts or omissions that may become known during the course of litigation.

52. As a direct and proximate result of Sullair's negligence, the Fire occurred and caused extensive damage to Signal Peak's property and resulted in significant extra expense.

53. Damages from the Fire totaled \$2,355,271.00

WHEREFORE, Plaintiff respectfully request this Court award it a judgment against Sullair in an amount to be proven at trial, together with costs, attorney's fees, expenses, pre- and post- judgment interest and any other relief this Court deems just and proper.

**COUNT VI – BREACH OF EXPRESS
AND/OR IMPLIED WARRANTIES (SULLAIR)**

54. Plaintiff restates and re-alleges all paragraphs above.

55. Sullair designed and manufactured components of the Plant that were incorporated into the Compressor Unit, including but not limited to the subject oil/air separator.

56. Sullair impliedly and/or expressly warranted that its components, including but not limited to the subject oil/air separator, would be fit for the ordinary purpose such components are used, that such components would be fit for Signal Peak's particular purposes, that such components were of fair average quality and that the components would be free from defects.

57. Sullair breached its express and/or implied warranties through the following acts and/or omissions:

- a. Failing to design and manufacture the subject oil/air separator to allow for adequate grounding to prevent sparking or ignition;
- b. Failing to provide adequate warnings and instructions as to the use, maintenance, and service of the subject oil/air separator;
- d. Failing to properly design and manufacture the subject oil/air separator so a fire would not occur;
- e. Failing to use reasonable care when designing, manufacturing, providing warnings/instructions and/or installing the subject oil/air separator and other components in the Compressor Unit;
- f. Improperly delegating, hiring, and/or supervising the workmanship and safety of the services delegated and/or subcontracted to another entity; and
- g. Any other acts or omissions that may become known during the course of litigation.

58. As a direct and proximate result of Sullair's breach of its express and/or implied warranties, the Fire occurred and caused extensive damage to Signal Peak property and resulted in significant extra expense.

1 59. Damages from the Fire totaled \$2,355,271.00

2 WHEREFORE, Plaintiff respectfully request this Court award it a judgment against
3 Sullair in an amount to be proven at trial, together with costs, attorney's fees, expenses, pre- and
4 post-judgment interest and any other relief this Court deems just and proper.

5 **COUNT VII - STRICT PRODUCTS LIABILITY (SULLAIR)**

6 60. Plaintiff restates and re-alleges all paragraphs above.

7 61. At all pertinent times herein, Sullair was in the business of manufacturing,
8 assembling, designing, producing, inspecting, selling, and/or otherwise placing into the stream
9 of commerce components that were incorporated into the Compressor Unit, including but not
10 limited to the subject oil/air separator.

11 62. Sullair, in whole or in part, manufactured, assembled, designed, produced,
12 inspected, an/or sold the subject components, including but not limited to the subject oil/air
13 separator, and/or placed the components into the stream of commerce.

14 63. At the time the components, including but not limited to the subject oil/air
15 separator, left the control of Sullair, a defect existed that rendered the components defective in
16 that they were dangerous to an extent beyond that anticipated by the ordinary user.

17 64. The components, including but not limited to the subject oil/air separator were
18 defective in manufacture, design and/or warning/instruction as:

- 19 a. Sullair failed to design and manufacture the subject oil/air separator to
20 allow for adequate grounding to prevent sparking or ignition;
- 21 b. Sullair failed to provide adequate warnings and instructions as to the use,
22 maintenance, and service of the subject oil/air separator;
- 23 d. Sullair failed to properly design and manufacture the subject oil/air
24 separator so a fire would not occur;
- e. Sullair failed to use reasonable care when designing, manufacturing,

1 providing warnings/instructions and/or installing the subject oil/air
2 separator and other components in the Compressor Unit;

3 g. Any other evidence of manufacturing, design and/or warning/instruction
4 defects that may become known during the course of litigation.

5 65. As a direct and proximate result of the defective condition of the components,
6 including but not limited to the subject oil/air separator, the Fire occurred and caused extensive
7 damage to Signal Peak property and resulted in significant extra expense.

8 66. Damages from the Fire totaled \$2,355,271.00

9 **WHEREFORE**, Plaintiff respectfully request this Court award it a judgment against
10 Sullair in an amount to be proven at trial, together with costs, attorney's fees, expenses, pre- and
11 post-judgment interest and any other relief this Court deems just and proper.

12 **COUNT VIII – NEGLIGENCE (POWER SERVICE)**

13 67. Plaintiff restates and re-alleges all paragraphs above.

14 68. At all times relevant herein Power Service had a duty to exercise reasonable care
15 when servicing, inspecting, and/or maintaining the Plant, including but not limited to the
16 Compressor Unit, so as to avoid damage to Signal Peak's property.

17 69. Power Service breached its duty through the following acts and/or omissions
18 constituting negligence, including but not limited to:

19 a. Failing to use reasonable care when performing service, inspection and/or
20 maintenance work on the Plant, including but not limited to the
21 Compressor Unit;

22 b. Failing to warn Signal Peak of the dangerous condition and safety hazard
23 posed by the Compressor Unit;

24 c. Improperly delegating, hiring, and/or supervising the workmanship and
safety of the services delegated and/or subcontracted to another entity; and

d. Any other acts or omissions that may become known during the course of
litigation.

1 70. As a direct and proximate result of Power Service's negligence, the Fire occurred
2 and caused extensive damage to Signal Peak property and resulted in significant extra expense.

3 71. Damages from the Fire totaled \$2,355,271.00

4 **WHEREFORE**, Plaintiff respectfully request this Court award it a judgment against
5 Power Service in an amount to be proven at trial, together with costs, attorney's fees, expenses,
6 pre- and post- judgment interest and any other relief this Court deems just and proper.

7 **COUNT IX – BREACH OF CONTRACT (POWER SERVICE)**

8 72. Plaintiff restates and re-alleges all paragraphs above.

9 73. Signal Peak contracted with Power Service, whereby Power Service agreed to
10 provide service, inspection and/or maintenance work on the Plant, including but not limited to
11 the Compressor unit.

12 74. Power Service breached its contractual duties through the following acts and/or
13 omissions:

- 14 a. Failing to use reasonable care when performing service, inspection and/or
15 maintenance work on the Plant, including but not limited to the
16 Compressor Unit;
- 17 b. Failing to warn Signal Peak of the dangerous condition and safety hazard
posed by the Compressor Unit;
- 18 c. Improperly delegating, hiring, and/or supervising the workmanship and
19 safety of the services delegated and/or subcontracted to another entity; and
- 20 d. Any other acts or omissions that may become known during the course of
litigation.

21 75. As a direct and proximate result of Power Service's breach of contract, the Fire
22 occurred and caused extensive damage to Signal Peak property and resulted in significant extra
23 expense.

1 76. Damages from the Fire totaled \$2,355,271.00

2 WHEREFORE, Plaintiff respectfully request this Court award it a judgment against
3 Power Service in an amount to be proven at trial, together with costs, attorney's fees, expenses,
4 pre- and post- judgment interest and any other relief this Court deems just and proper.

5 **COUNT X – BREACH OF EXPRESS AND/OR**
6 **IMPLIED WARRANTIES (POWER SERVICE)**

7 77. Plaintiff restates and re-alleges all paragraphs above.

8 78. Signal Peak contracted with Power Service, whereby Power Service agreed to
9 provide service, inspection and/or maintenance work on the Plant, including but not limited to
10 the Compressor Unit, and impliedly and/or expressly warranted that it would exercise reasonable
11 care in performing its duties so as to avoid damage to Signal Peak's property.

12 79. Power Service breached its contractual duties through the following acts and/or
13 omissions:

- 14 a. Failing to use reasonable care when performing service, inspection and/or
15 maintenance work on the Plant, including but not limited to the
16 Compressor Unit;
- 17 b. Failing to warn Signal Peak of the dangerous condition and safety hazard
18 posed by the Compressor Unit;
- 19 c. Improperly delegating, hiring, and/or supervising the workmanship and
20 safety of the services delegated and/or subcontracted to another entity; and
- 21 d. Any other acts or omissions that may become known during the course of
22 litigation.

23 80. As a direct and proximate result of Power Service's breach of its express and/or
24 implied warranties, the Fire occurred and caused extensive damage to Signal Peak property and
resulted in significant extra expense.

23 81. Damages from the Fire totaled \$2,355,271.00

1 **WHEREFORE**, Plaintiff respectfully request this Court award it a judgment against
2 Power Service in an amount to be proven at trial, together with costs, attorney's fees, expenses,
3 pre- and post- judgment interest and any other relief this Court deems just and proper.

4 **COUNT XI – NEGLIGENCE (DOES)**

5 82. Plaintiff restates and re-alleges all paragraphs above.

6 33. Upon information and belief, John Does 1-10 are individuals and/or companies,
7 including subcontractors and manufacturers, who participated in and/or provided products used
8 in the construction, manufacture, installation, maintenance, service, commissioning, and/or
9 inspection of the Plant, including but not limited to the Compressor Unit.

10 84. Upon information and belief, Does 1-10 had duties of reasonable care in regard to
11 participating in or providing products for the construction, manufacture, installation,
12 maintenance, service, commissioning, and/or inspection of the Plant, including but not limited to
13 the Compressor Unit.

14 85. Upon information and belief, Does 1-10 breached their duties by failing to
15 adequately perform construction, manufacture, installation, maintenance, service,
16 commissioning, and/or inspection services for the Plant, including but not limited to the
17 Compressor Unit, as well as failed to provide adequate products for the same.

18 86. As a direct and proximate result of the actions and/or omissions of Does 1-10,
19 Fire occurred and caused extensive damage to Signal Peak property and resulted in significant
20 extra expense.

21 87. Damages from the Fire totaled \$2,355,271.00

22 **WHEREFORE**, Plaintiff respectfully request this Court award it a judgment against
23 Does 1-10 in an amount to be proven at trial, together with costs, attorney's fees, expenses, pre-
24

1 and post-judgment interest and any other relief this Court deems just and proper.

2 **DEMAND FOR TRIAL BY JURY**

3 Plaintiff hereby demands a trial by jury on all issues so triable.

4 DATED this 15 day of August, 2016.

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